



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0239; FRL-10597-01-R9]

Air Plan Actions; Nevada; Clark County – Department of Environment and Sustainability; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing an approval, a partial approval and partial disapproval, and a limited approval and limited disapproval of certain revisions to the Clark County portion of the Nevada State Implementation Plan (SIP). These revisions primarily concern the Clark County Department of Environment and Sustainability’s (“DES” or “Department”) general definitions rule and New Source Review (NSR) permitting program for new and modified sources of air pollution under the Clean Air Act (CAA or “Act”). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received by **[Insert date 30 days after date of publication in the *Federal Register*]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2020-0239 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of

the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, Air-3-1, 75 Hawthorne St., San Francisco, CA 94105, (415) 972-3534, yannayon.laura@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. The State’s Submittal

A. What rules did the State submit?

Table 1 lists the rules¹ addressed by this proposal, including the dates they were adopted by the Clark County Board of County Commissioners, and the dates they were submitted by the Nevada Division of Environmental Protection (NDEP) to the EPA.

¹ These rules are referred to by the Clark County DES as “Sections.”

Table 1 – Submitted Rules

Section	Section Title	Adopted	Cover Letter Date	Submittal Date
0	Definitions	7/20/21	1/31/22	1/31/22
10	Compliance Schedules (Request to rescind)	12/18/18	6/6/19	6/10/19
12.0	Applicability and General Requirements	1/21/20	3/13/20	3/16/20
12.1	Permit Requirements For Minor Sources	12/18/18	4/12/19	4/12/19
12.11	General Permits for Minor Stationary Sources	12/18/18	4/12/19	4/12/19

Six months after the submittal of each rule, the EPA determined that the SIP submittals were deemed complete by the operation of law to meet the completeness criteria, in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. *Are there other versions of these rules?*

There are previous versions of some of these rules approved in the SIP. The current SIP-approved rules are listed in Table 2.

Table 2 – SIP-Approved Rules

Rule	Rule Title	SIP Approval Date	Federal Register Citation
0	Definitions	10/17/14	79 FR 62350
1	Definition: Subsection 1.1, Affected Facility	4/14/81	46 FR 21758
1	Definition: Subsection 1.26, Dust	4/14/81	46 FR 21758
1	Definition: Subsection 1.29, Existing Gasoline Station	4/14/81	46 FR 21758
1	Definition: Subsection 1.36, Fumes	4/14/81	46 FR 21758
1	Definition: Subsection 1.51, Mist	4/14/81	46 FR 21758
1	Definition: Subsection 1.57, New Gasoline Station	6/21/82	47 FR 26620
1	Definition: Subsection 1.95, Uncombined Water	4/14/81	46 FR 21758
10	Compliance Schedules	8/27/81	46 FR 43141
12.0	Applicability and General Requirements	10/17/14	79 FR 62350
12.1	Permit Requirements For Minor Sources	10/17/14	79 FR 62350

C. *What is the purpose of the submitted rules?*

The submitted rules are intended to update the Nevada SIP with recent revisions to the

Department's Air Quality Regulations.² The revisions to Section 0, "Definitions," would add, revise or remove certain definitions, and move six definitions currently found in SIP-approved Section 1, "Definition," into Section 0. Section 10, "Compliance Schedules," was repealed locally because it had become obsolete. The SIP submittal requests that the EPA remove Section 10 from the SIP.

The revisions to Section 12.0, "Applicability and General Requirements," remove a portion of the rule entitled "Transition Procedures," that had been included for the sole purpose of aiding in the transition from the 2004 version of Section 12 to the new Sections 12.1, 12.2, 12.3 and 12.4 that replaced it in 2011. This transition was completed in 2015. Other minor editorial changes were also made, such as capitalizing defined terms and replacing the term "Department of Air Quality" with the term "Department".

The revisions to Section 12.1, "Permit Requirements for Minor Sources," include numerous updates and minor revisions including edits to provide clarity to rule provisions, as well as the addition of several new or clarified permit exemptions for insignificant activities.

Section 12.11 is a new SIP submittal of a rule to regulate the issuance of General Permits for minor stationary sources.

Additional information concerning these submittals can be found in our Technical Support Document (TSD) for this action, which can be found in the docket for this rulemaking.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

The EPA reviewed Clark County's revisions for compliance with the applicable

² We are not taking action on earlier revised versions of Section 0 that were adopted on December 18, 2018, December 17, 2019, and January 21, 2020, which have been superseded by the more recent version of Section 0 that was adopted on July 20, 2021, and submitted to the EPA on January 31, 2022. However, we have considered relevant information relating to the revisions made in those older versions of Section 0 in evaluating the July 20, 2021, version of Section 0. Similarly, we are not taking action on an earlier revised version of Section 12.0 that was adopted on December 18, 2018, which has been superseded by the more recent version of Section 12.0 that was adopted on January 21, 2020, and submitted to the EPA on March 16, 2020. However, we have considered relevant information relating to the revisions made in that older version of the rule in evaluating the January 21, 2020, version of Section 12.0.

requirements of section 110(a)(2) and associated regulations at 40 CFR 51.160 through 51.164. We also reviewed the rules for consistency with other CAA general requirements for SIP submittals, including requirements at section 110(a)(2)(A) regarding rule enforceability, and requirements at sections 110(l) and 193 for SIP revisions.

Section 110(a)(2)(C) of the CAA requires each SIP to include a program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The EPA's regulations at 40 CFR 51.160 through 51.164 provide specific programmatic requirements to implement this statutory mandate. These requirements, commonly referred to as the "minor NSR" or "general NSR" program, apply generally to both major and non-major stationary sources and modifications and in both attainment and nonattainment areas, in contrast to the specific statutory and regulatory requirements for permitting programs under parts C and D of title I of the CAA that apply to major sources in attainment and nonattainment areas, respectively.

Section 110(a)(2)(A) of the CAA requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable. Section 110(l) of the CAA prohibits the EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. Section 193 of the CAA prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990, in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutant(s). With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing.

B. *Do the rules meet the evaluation criteria?*

Based on our review of the public process documentation included in Clark County's submittals, which include Affidavits of Publications and Records of Publications, we find that

Clark County has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of these rules to the EPA, consistent with CAA sections 110(a)(2) and 110(l). With respect to the substantive requirements found in CAA sections 110(a)(2)(A) and (C), and 40 CFR 51.160 through 51.164, we evaluated Clark County's submittal in accordance with the applicable CAA and regulatory requirements, primarily focusing on those that apply to new source review permit programs, and find that the revisions to the SIP as reflected in our action on the revised rules, as well as new Section 12.11, and the removal of Section 10 from the SIP, satisfy these requirements, except for a few relatively minor deficiencies, discussed in Section II.C. of this proposal.

With respect to the substantive requirements found in CAA sections 110(l) and 193, we find that our approval of this SIP submittal would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the CAA. In addition, we find that the revisions to the SIP as reflected in our action on the submitted rules listed in Table 1 of this proposal will not relax any pre-November 15, 1990 control requirement in the SIP. Accordingly, we have concluded that our action is consistent with the requirements of CAA sections 110(l) and 193.

Our TSD contains a more detailed discussion of our analysis.

C. *What are the rule deficiencies?*

For Section 0, we find that the removal of the definition of "Clearing and Grubbing" is not approvable as the term is still used in the Section 94 Handbook that is part of the SIP.

For Section 12.1, we identified the following four deficiencies. First and second, the provisions in Sections 12.1.2(c)(7) and (8), which exempt ancillary parts washers and degreasers that use only certified clean air solvents from permitting requirements, are deficient because the term "certified clean air solvents" is not defined in any Section 12 series rule, which makes the provision unenforceable. Third, the provision in Section 12.1.2(c)(10) allowing the Control Officer to deem any other emission unit or activity to be insignificant on a case-by-case basis

with no specific criteria for making this determination is deficient because it contains impermissible Director's discretion. Fourth, the provision in Section 12.1.4.1(z) contains impermissible Control Officer discretion to decide whether certain conditions should be added to portable minor source permits.

For Section 12.11, the rule contains an unenforceable cross-reference relating to certain emissions inventory report requirements, and does not satisfy the requirement in 40 CFR 51.160(f) that the screening model used pursuant to Section 12.11.1(f) be based on the applicable models, databases, and other requirements specified in 40 CFR part 51, appendix W.

Our TSD contains a more detailed discussion of these deficiencies.

D. *EPA recommendations to further improve the rule*

The TSD also includes recommendations for additional clarifying revisions to consider for the rules evaluated in this SIP submittal.

E. *Proposed action and public comment*

Pursuant to section 110(k)(3) of the Act, for Section 0, we are proposing a partial approval and partial disapproval. We are proposing approval of the rule with the exception of its removal of the definition of "Clearing and Grubbing." This definition is separable from the other definitions and revisions in Section 0 and therefore the disapproval issue related to this definition is suitable for a partial disapproval.

If this action is finalized as proposed, the July 20, 2021, version of Section 0 would be approved into the SIP, and a separate entry for the definition of "Clearing and Grubbing" from the current SIP-approved version of Section 0, approved into the SIP on October 17, 2014, and referenced in Table 2 of this proposal, would be retained in the SIP. Therefore, this partial disapproval action would require no further action from the Department to remedy the identified deficiency. More generally, the incorporation of the submitted version of Section 0 into the SIP would replace the older version of Section 0 that is currently in the SIP, as referenced in Table 2, except for the definition of "Clearing and Grubbing"; that older version of Section 0 would be

removed from the SIP (except for the specified definition). In addition, our approval of certain definitions in the submitted version of Section 0 would replace in the SIP the older versions of those same definitions that are currently included in SIP-approved Section 1, as referenced in Table 2 of this proposal; these older versions of the definitions would be removed from the SIP.

Pursuant to CAA section 110(k)(3), we are proposing to approve the request to rescind Section 10 from the SIP, as we have determined that its removal is consistent with the relevant CAA requirements. We are also proposing to fully approve Section 12.0, adopted on January 21, 2020, based on our determination that the rule revisions satisfy the applicable statutory and regulatory provisions governing regulation of stationary sources under CAA section 110(a)(2)(C), including the permitting requirements in 40 CFR 51.160 through 51.164. If our action is finalized as proposed, the submitted version of Section 12.0 would replace the older version of Section 12.0 that is currently in the SIP, as referenced in Table 2 of this proposal, which would be removed from the SIP.

Pursuant to CAA sections 110(k)(3) and 301(a) of the Act, we are proposing limited approval and limited disapproval of Sections 12.1 and 12.11, both adopted on December 18, 2018. We are proposing to approve these rules based on our determination that the rules mostly satisfy the applicable statutory and regulatory provisions governing regulation of stationary sources under CAA section 110(a)(2)(A) and (C), including the permitting requirements for stationary sources in 40 CFR 51.160 through 51.164. If our action is finalized as proposed, our limited approval of Section 12.1 would replace the older version of Section 12.1 that is currently in the SIP, as referenced in Table 2, which would be removed from the SIP. Our limited approval of Section 12.11 would approve it into the SIP in its entirety. We are also proposing a limited disapproval of these same rules because they contain certain deficiencies as discussed above and in Sections 5.5, 5.6, and 6 of the TSD. The intended effect of this proposed limited approval and limited disapproval action is to update the applicable SIP with current and clarified, and, in some

regards, strengthened, Department permitting rules, while triggering the obligation to remedy the identified deficiencies.

In support of our proposed action, we have also concluded that our approval and limited approval of the submitted rules would comply with sections 110(l) and 193 of the Act, as explained above. If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.1470 (Identification of plan).

If we finalize the limited disapproval of Sections 12.1 and 12.11 as proposed, CAA section 110(c) would require the EPA to promulgate a Federal Implementation Plan (FIP) within 24 months unless we approve a subsequent SIP revision that corrects the deficiencies identified in the final limited disapproval. A final limited disapproval of Sections 12.1 and 12.11 will not start any CAA section 179 sanctions clocks as both rules address only minor source program requirements.³

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the following Clark County DES rules: Sections 0, 12.0, 12.1 and 12.11, as described in Table 1 of this proposal concerning definitions and New Source Review permit program requirements. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this proposal for more information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at

³ Our partial disapproval of Section 0 does not trigger any FIP obligation, as the identified deficiency is remedied by the fact that the provision necessary to address the deficiency is already included in the SIP and will not be removed as part of this action. For the same reason, this partial disapproval also would not potentially trigger any offset or highway sanctions pursuant to CAA section 179.

<https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not

impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

The state did not evaluate environmental justice considerations as part of its SIP. There is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: January 26, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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